

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



JULIAN A. URBAN,

Plaintiff,

v.

22-CV-19 (JLS) (JJM)

DR. MARY T. BASSETT, in her official
capacity as Commissioner of Health for
the State of New York, LYNN FUSCO,
in her official capacity as
Superintendent of Schools of Erie 1
BOCES,

Defendants.

DECISION AND ORDER

Plaintiff Julian A. Urban commenced this action against Defendants¹ Dr. Mary T. Bassett and Lynn Fusco in New York State Supreme Court, Erie County, in early December 2021, alleging claims related to a vaccination/masking/COVID-19 testing policy that applied to him as an employee of Erie 1 BOCES. *See* Dkt. 1. Defendant Fusco removed the case to this Court on January 7, 2022, and Defendant Bassett consented to removal. Dkt. 1; Dkt. 2. Each Defendant moved to dismiss for failure to state a claim. Dkt. 8; Dkt. 9. Urban responded in opposition to both motions, and each Defendant replied. Dkts. 17–20.

¹ Urban initially named New York State Commissioner Betty Rosa as a defendant, but dismissed her from via stipulation before the case arrived in this Court. *See* Dkt. 1-15.

This Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 12. Judge McCarthy issued a Report and Recommendation (R&R) on April 18, 2022, recommending that this Court grant Defendants’ motions to dismiss but grant Urban leave to amend. Dkt. 22.

Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). It must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

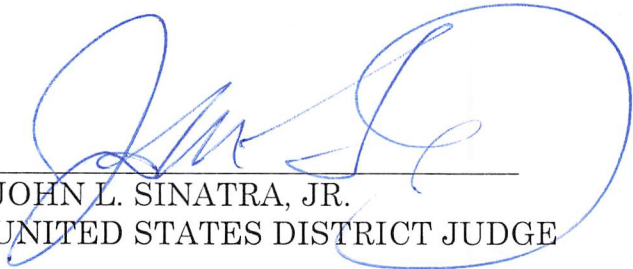
Although not required to do so, this Court nevertheless reviewed Judge McCarthy’s R&R. Based on that review, absent any objections, and in light of the recommendation to grant Urban leave to amend, the Court accepts Judge McCarthy’s recommendation to grant Defendants’ motions to dismiss, with leave to amend.

CONCLUSION

For the reasons stated above and in the R&R, the Court GRANTS Defendants' motions to dismiss (Dkt. 8, Dkt. 9), without prejudice. Urban may file an amended pleading by **June 15, 2022**. The Court refers the case back to Judge McCarthy for further proceedings, consistent with the referral order at Dkt. 12.

SO ORDERED.

Dated: May 25, 2022
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE